Blečić v Croatia

1. The case originated in an application (no. 59532/00) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian citizen, Ms Krstina Blečić ("the applicant"), on 6 May 2000.

2. The applicant was represented by Mr T. Vukičević, a lawyer practising in Split. The Croatian Government ("the Government") were represented by their Agent, Ms L. Lukina-Karajković.

3. The applicant alleged, in particular, that her rights to respect for her home and to peaceful enjoyment of her possessions had been violated.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 30 January 2003, the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The parties replied in writing to each other's observations. In addition, third-party comments were received from the Organisation for Security and Cooperation in Europe ("the OSCE"), which had been granted leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The respondent Government, but not the applicant, replied to those comments (Rule 44 § 5).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1926 and lives in Zadar, Croatia.

8. In 1953 the applicant, together with her husband, acquired a specially protected tenancy (*stanarsko pravo*) of a flat in Zadar. After her husband's death in 1989 the applicant became the sole holder of the specially protected tenancy.

9. On 3 June 1991, Parliament enacted the Specially Protected Tenancies (Sale to Occupier) Act (*Zakon o prodaji stanova na kojima postoji stanarsko pravo*), which regulates the sale of publicly-owned flats previously let under specially protected tenancy.

10. On 26 July 1991 the applicant went to visit her daughter who lived in Rome. She intended to stay with her daughter for the summer. She locked the flat in Zadar and left all the furniture and personal belongings in it. She asked a neighbour to pay the bills in her absence and to take care of the flat. However, by the end of August 1991, the armed conflict escalated in Dalmatia, resulting in severe travel difficulties in that area, including the town of Zadar.

11. In October 1991 the Croatian authorities stopped paying the applicant's pension. The payments were resumed in April 1994. The applicant also lost the right to medical insurance. In these circumstances, the applicant decided to remain in Rome.

12. From 15 September 1991 the town of Zadar was exposed to constant shelling and the supply of electricity and water was disrupted for over one hundred days.

13. In November 1991 a certain M.F., with his wife and two children, broke into the applicant's flat in Zadar.

14. On 12 February 1992 the Zadar Municipality (*Općina Zadar*) brought a civil action against the applicant before the Zadar Municipal Court (*Općinski sud u Zadru*) for termination of her specially protected tenancy on the flat in question. The Municipality claimed that the applicant had been absent from the flat for more than six months without justified reason.

15. In her submissions to the court, the applicant explained that she had been forced to stay with her daughter in Rome from July 1991 until May 1992. She had not been able to return to Zadar since she had no means of subsistence and no medical insurance and was in poor health. Furthermore, during her stay in Rome, she had learned from the neighbour that M.F. had broken into her flat with his family. When she had enquired about her flat and her possessions in the flat, M.F. had threatened her over the telephone.

16. On 9 October 1992 the Zadar Municipal Court terminated the applicant's specially protected tenancy. The court established that the applicant had left Zadar on 26 July 1991 and had not returned until 15 May 1992. It stated that in the relevant period no order had been issued to the citizens of Zadar to evacuate the town owing to the escalation of the armed conflict but that it had been the personal decision of every citizen whether to leave the town or to stay. On that basis the court found that the applicant's absence was not justified by the war in Croatia.

17. Furthermore, the court did not accept the applicant's explanation that she had fallen ill during her stay in Rome and was not able to travel. It was established that the applicant had suffered from spinal arthrosclerosis and diffuse osteoporosis for a long time, which had not affected her ability to travel. Even though her left shoulder had been dislocated on 25 March 1992, she had been able to travel following the immobilisation of the injured joint. Furthermore, by 25 March 1992 she had already been absent from the flat for a period of more than six months.

18. The applicant's further explanation that she had stopped receiving her pension in October 1991 and thus had been left without any means of subsistence was not accepted by the court as a justified reason for not returning to Zadar. It took the view that the applicant's daughter could have sent her money. Therefore, the court concluded that the applicant's reasons for not having lived in the flat were not justified.

19. Following an appeal by the applicant against the judgment, it was quashed by the Zadar County Court (*Županijski sud u Zadru*) on 10 March 1993. The County Court found that the court of first instance had not taken into careful consideration the

applicant's personal circumstances, namely her age and poor health, the fact that she had lost her pension and the fact that she had lived alone in Zadar without any close relatives. Furthermore, the applicant's decision to prolong her stay in Rome should have been carefully assessed against the background of objective circumstances, namely that Zadar had been exposed to daily shelling and had not had a regular supply of water or electricity in the material period, and that third persons had occupied the applicant's flat. The case was remitted to the first-instance court.

20. In the resumed proceedings, on 18 January 1994 the Zadar Municipal Court ruled again in favour of the municipality and terminated the applicant's specially protected tenancy. It observed that she had been absent from the flat for over six months without justified reason and repeated in substance the findings of the judgment of 9 October 1992.

21. The applicant appealed. On 19 October 1994 the County Court reversed the first-instance judgment and dismissed the municipality's claim. It found that the escalation of war and the applicant's personal circumstances, as described above (see paragraphs 11-13), justified her absence from the flat.

22. On 10 April 1995 the Zadar Municipality filed a request for revision on points of law (*revizija*) with the Supreme Court (*Vrhovni sud Republike Hrvatske*).

23. On 15 February 1996 the Supreme Court accepted the request for revision and reversed the County Court's judgment. It found that the reasons submitted by the applicant for her absence from the flat were not justified.

24. The relevant part of the Supreme Court's judgment reads as follows:

"In the period of the aggression against Croatia, living conditions were the same for all citizens of Zadar and, as rightly submitted by the plaintiff, it is neither possible nor legitimate to separate the defendant's case from the context of that aggression. Holding the contrary would mean assessing her case in a manner isolated from all the circumstances which marked that time and determined the conduct of each individual.

Contrary to the appellate court's opinion, this court, assessing in that context the defendant's decision not to return to Zadar during the aggression but to stay in Italy, considers the non-use of the flat unjustified. The factual findings made in the case reveal that, in view of her health condition and the available travel connections, the defendant was able to come to Zadar; her health would not have deteriorated because of her stay in Zadar; and she could have taken care of herself. The assumption that she would have had to make a considerable mental and physical effort in order to provide for her basic living needs (all the residents of Zadar who remained in the town, from the youngest to the oldest, were exposed to the same living conditions) does not justify her failure to return to Zadar and, accordingly, does not constitute a justified reason for the non-use of the flat."

25. On 8 November 1996 the applicant filed a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*). She claimed that her rights to respect for her home and property had been violated and that she had been deprived of a fair trial.

26. On 8 November 1999 the Constitutional Court dismissed the applicant's complaint. It found that the Supreme Court had correctly applied the relevant legal provisions to the factual background established by the lower courts when holding that the applicant's absence from the flat for more than six months had been unjustified. The Constitutional Court concluded that the applicant's constitutional rights had not been violated.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

27. The relevant provisions of the 1990 Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990 and 135/97), as in force during the material period, read as follows:

Article 16

"Rights and freedoms may only be restricted by law to protect the rights and freedoms of others, the legal order, public morals or health."

Article 34 § 1

"The home is inviolable."

Article 48 §§ 1 and 2

"1. The right to property is guaranteed.

2. Property implies duties. Holders of the right to property and its users shall have a duty to contribute to the general welfare."

Article 134

"International agreements concluded and ratified in accordance with the Constitution and made public shall be part of the Republic's internal legal order and shall be [hierarchically] superior to the [domestic] statutes."

28. Article 17 of the International Covenant on Civil and Political Rights (which entered into force in respect of Croatia by notification of succession on 8 October 1991) provides:

"1. No one shall be subjected to arbitrary or unlawful interference with his...home...

2. Everyone has the right to the protection of the law against such interference..."

29. The relevant provisions of section 99 of the Housing Act (*Zakon o stambenim odnosima*, Official Gazette nos. 51/1985, 42/1986, 22/1992 and 70/1993), as in force in the material period, provided as follows:

"1. A specially protected tenancy may be terminated if the tenant [...] ceases to occupy the flat for an uninterrupted period exceeding six months.

2. The termination of a specially protected tenancy under the provisions of paragraph 1 of this section may not be effected in respect of a person who does not use the flat on account of undergoing medical treatment, performing military service or for other justified reasons."

30. In case no. Rev-3839/93 the Supreme Court interpreted section 99(1) of the Housing Act as follows:

"War events *per se*, without any particular reasons indicating the impossibility of using a flat, do not constitute a justified reason for the non-use of the flat."

31. In case no. Rev-155/1994-2 the Supreme Court interpreted another aspect of section 99(1) of the Housing Act as follows:

"The fact that a flat that is not being used by its tenant is illegally occupied by a third person does not, *per se*, make the non-use [of the flat by the tenant] justified. In other words, if the tenant fails to take the appropriate steps to regain possession of the flat within the statutory time-limits set forth in section 99(1) of the Housing Act..., then the [illegal occupation of the flat by a third person] is not an obstacle to the termination of the specially protected tenancy."

32. The Specially Protected Tenancies (Sale to Occupier) Act (Official Gazette no. 27/1991) regulates the conditions of sale of flats let under specially protected tenancies. The Act entitles the holder of a specially protected tenancy on a publicly-owned flat to purchase it under favourable conditions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. The applicant complained that the Croatian courts' decisions to terminate her specially protected tenancy had amounted to a violation of her right to respect for her home, guaranteed under Article 8 of the Convention, which, in its relevant part, provides:

"1. Everyone has the right to respect for...his home...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of...the economic well-being of the country,...or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The Government

34. The Government argued that the applicant, after the death of her husband in 1989, had not lived in the flat in Zadar continuously, but had spent more than five months annually visiting her daughter in Rome. In July 1991 the applicant had abandoned the flat completely and had not returned to Zadar until May 1992. Although she had

meanwhile learnt that M.F. had occupied her flat in her absence, she had failed to notify the owner of the flat or to institute any proceedings to have him evicted. She had also failed to notify the owner of the fact that she had been in Rome and that she had not been able to return to Zadar owing to her illness and the war. In those circumstances, it could not be argued that the flat in question was the applicant's home for the purposes of Article 8 of the Convention.

35. The Government stated further that there had been no interference with the applicant's right to respect for her home since she had not been evicted; rather, she had voluntarily abandoned the flat.

36. Moreover, the Government submitted that, even if the Court were to find that there had been interference, it had been prescribed by law, namely section 99 of the Housing Act.

37. In the Government's opinion, there had existed a legitimate aim for the termination of the applicant's specially protected tenancy. They explained that specially protected tenancies were mostly granted by various companies or municipalities to meet housing needs. The flats in question remained in the ownership of these companies or municipalities. Persons holding a specially protected tenancy paid a very low rent and were protected from arbitrary eviction. However, the purpose of such protected tenancies being to provide housing for workers, the owners were entitled to seek the termination of a tenancy before a court whenever the holder of a tenancy ceased to occupy the flat for a period of more than six months.

38. In the instant case, the applicant was not the owner of the flat but had only obtained a specially protected tenancy. By terminating the applicant's tenancy, the domestic authorities had pursued the legitimate aims of preserving the economic well-being of the country and protecting of the rights of others. By abandoning the flat, the applicant had shown that she no longer needed it, which had allowed the authorities to grant the flat to another person in need.

39. As to the proportionality of the measure in question, the Government emphasised that the domestic courts had assessed all the relevant facts of the applicant's case, namely her personal circumstances such as her health, age and reasons for leaving the flat, and the general living conditions in Zadar at the relevant time. The courts had found that, in spite of the attacks on Zadar, there had been no immediate need to leave the city at any time and observed that a number of displaced persons from the surrounding area had actually moved into the town. In sum, the termination of the applicant's tenancy could not be considered arbitrary.

2. The applicant

40. The applicant stressed that she had always considered her flat in Zadar her home, to which she intended to return. She argued that she had not abandoned the flat but had only been visiting her daughter. During her absence, the war in Croatia had escalated and she had not been able to return. Afterwards she had fallen ill and had had to stay in Rome. When she had returned in May 1992, she had not been able to enter the flat, which had been occupied by M.F., and had therefore been forced to go

back to Rome. Her intention to return to her home in Zadar was supported by the fact that she had left all the furniture and her personal belongings there.

41. The applicant maintained that the courts' termination of her specially protected tenancy had amounted to a violation of her right to respect for her home.

42. Furthermore, the applicant asserted that there had been no need to terminate her tenancy. That measure, which had purportedly pursued the legitimate aim of providing a displaced person with accommodation, had not been justified, as this goal could have been achieved by allocating the flat to another person temporarily. The authorities had, by depriving her of the specially protected tenancy, left her with no home or place to live, and this situation had become permanent. Therefore, the measure had placed an excessive burden on her and had been disproportionate to the legitimate aim pursued.

43. The applicant also submitted the Norwegian Refugee Council's analysis of 586 individual cases of termination of specially protected tenancies in court proceedings in Croatia.

3. The third party

44. The OSCE argued that the applicant's specially protected tenancy could be appropriately viewed only in the overall context of actions by the judiciary and legislature that had resulted in the mass termination of such tenancies during and after the homeland war in Croatia. It submitted that, from 1991 onwards, 23,700 proceedings for the termination of specially protected tenancies had been initiated.

45. Most of these proceedings had been instituted against persons of Serbian origin, which had resulted in a significant decline in the minority population in Croatia. In the OSCE's view, the termination of specially protected tenancies had had a strong negative effect on minority return.

46. The OSCE further submitted a detailed analysis of the legal status accorded to specially protected tenancies in Bosnia and Herzegovina. They maintained that specially protected tenancies in the former Yugoslavia had constituted a strong form of tenure, which had allowed their holders to permanently use publicly-owned flats. Such flats had been generally built and disposed of by a State-owned enterprise or a public body entitled to allocate specially protected tenancies to persons they had employed. In order to provide the means for such a system, all citizens had paid an obligatory, income-scaled contribution to housing construction funds. Once obtained, a specially protected tenancy could be terminated only in accordance with the law and in court proceedings.

47. While providing displaced persons with housing could be regarded as a legitimate aim, the permanent termination of specially protected tenancy rights under wartime conditions could represent an excessive burden on the tenants. The need to provide housing for refugees and displaced persons should ultimately be balanced against the interests of the tenancy right-holders. The Croatian authorities could have declared their flats temporarily abandoned, allocating them to displaced persons for temporary

use until the end of hostilities, and thereby easing the burden on the original holders of the tenancies.

The OSCE observed that the Court had examined certain situations involving displaced persons in, for example, the case of *Loizidou v. Turkey* (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI), where it had found a violation of Article 1 of Protocol No. 1 in that the Turkish Government had not explained how the legitimate aim of providing housing to Turkish Cypriot refugees could justify the complete negation of the applicant's property rights in the form of total and continuous denial of access and a purported expropriation without compensation.

48. Addressing an argument of the domestic courts – according to which all Zadar residents were exposed to the same living conditions – the OSCE pointed out that while it was true that the entire population of areas involved in conflict suffered many of the same difficulties, such as shelling and loss of water and electricity, individuals of minority ethnicity additionally faced harassment, threats, and in many cases, forcible eviction from their homes and property. The conditions under which these persons left were illustrated by the fact that many had left their personal belongings in their flats. Under these circumstances, the OSCE found it difficult to view absence from flats owing to war activities as voluntary in nature.

4. The Government's comments on the third-party intervention

49. The Government challenged in general the relevance of the third party's submissions, arguing that the present case did not raise any question regarding the return of refugees or displaced persons or minority return, as the applicant had never been a refugee or displaced person. They also submitted an overview of achievements in the process of the return of refugees and displaced persons in the Republic of Croatia, arguing that, despite many difficulties, this should be deemed successful.

50. As to the part of the third-party intervention that related to the legal nature of the specially protected tenancy, the Government, acknowledging similarity to a certain extent, pointed out the differences in the legal regulation of specially protected tenancies in Croatia and in Bosnia and Herzegovina. They emphasised that the third-party intervention on this point primarily dealt with the situation in Bosnia and Herzegovina and, therefore, was not directly relevant to the situation in Croatia. Following the dissolution of the former Yugoslavia, Croatia had become an independent state, which enacted its own legislation, and the development of its legal order had since been different. The mere fact that the problems relating to the war were similar did not mean that they necessarily required identical legal solutions in two different States. Interferences with the rights protected by the Convention had to be considered independently with regard to each Contracting State's legal order and social and political situation, and regard being had to its margin of appreciation.

B. The Court's assessment

1. Whether the flat in question was the applicant's home within the meaning of Article 8 of the Convention

51. The Court notes that the applicant continuously lived in her flat in Zadar from 1953 until 26 July 1991, when she departed for Rome. On her departure, the applicant left all the furniture in the flat as well as her personal belongings. She did not rent the flat to any other person; she locked it and asked her neighbour to take care of it during her absence.

52. In these circumstances, the Court is satisfied that the applicant did not intend to abandon the flat; rather, she made appropriate arrangements for its maintenance, with a view to her return. The flat in question can therefore reasonably be regarded as her home, at the material time, for the purposes of Article 8 of the Convention.

2. Whether there was any interference by a public authority with the exercise of the applicant's right to respect for her home

53. The Court notes that the Zadar Municipality sought before the Zadar Municipal Court the termination of the applicant's specially protected tenancy of the flat in question. The court allowed the claim and the first-instance judgment was upheld by the higher courts, resulting in the applicant having no home in Croatia.

54. Having established that the flat in question was the applicant's home for the purposes of Article 8 of the Convention, the Court finds that the termination of the applicant's specially protected tenancy by the domestic courts constituted an interference with her right to respect for her home.

3. Whether the interference was justified

55. In order to determine whether the interference was justified under paragraph 2 of Article 8, the Court must examine in turn whether it was "in accordance with the law", whether it had an aim that was legitimate under that paragraph and whether it was "necessary in a democratic society" for the aforesaid aim (see *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 124-C, p. 20, § 48).

a. In accordance with the law

56. It has not been disputed that the interference, which was based on section 99(1) of the Housing Act, was "in accordance with the law". The Court has no reason to hold otherwise.

b. Legitimate aim

57. The Court notes that, according to the Government, specially protected tenancies were established on publicly-owned flats in the former Yugoslavia in order to satisfy the housing needs of citizens. The policy governing these tenancies secured quite favourable terms for the tenants, while requiring them actually to live in those flats. Section 99(1) of the Housing Act was aimed at the prevention of any abuse of the tenancy right by allowing for its termination in cases where persons holding the right did not observe its purpose – in other words, did not occupy the flat granted to them. This has not been disputed by the applicant.

58. The Court considers that the legislation applied in the applicant's case pursued a legitimate aim, namely, the satisfaction of the housing needs of citizens, and that it was thus intended to promote the economic well-being of the country and the protection of the rights of others. The Court sees no reason to assume that it pursued any other purpose. It is not in dispute that, in pursuit of those aims, the Croatian legislature was entitled, by enacting section 99 of the Housing Act, to prescribe the termination of specially protected tenancies held by individuals who no longer lived in the publicly-owned flats allocated to them and the subsequent redistribution of such flats to those in need. The only point at issue is whether, in applying this provision in the applicant's case, the Croatian courts infringed her right to respect for her home in a disproportionate manner.

c. Necessary in a democratic society

59. In determining whether the impugned measure was "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention (see *Hoppe v. Germany*, no. 28422/95, § 48, 5 December 2002). The notion of necessity implies a pressing social need; in particular, the measure employed must be proportionate to the legitimate aim pursued. In addition, the scope of the margin of appreciation enjoyed by the national authorities will depend not only on the nature of the aim of the restriction but also on the nature of the right involved.

60. In the instant case, satisfying housing needs must be balanced against the applicant's right to respect for her home, a right which is pertinent to her own personal security and well-being. The importance of such a right to the individual must be taken into account in determining the scope of the margin of appreciation allowed to the Government (see *Gillow v. the United Kingdom*, cited above, p. 22, § 55).

61. The Court also reiterates that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see *Kaneva v. Bulgaria*, no. 26530/95, Commission decision of 27 February 1997). It follows that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding termination of the specially protected tenancies in Croatia, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their margin of appreciation (see, *mutatis mutandis*, *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55, and *Elsholz v. Germany*, no. 25735/94, ECHR 2000-VIII, p. 363, § 48).

62. Turning to the present case, there remains the question whether the manner in which the domestic courts exercised their discretion in the applicant's case corresponded to a pressing social need and, in particular, was proportionate to the legitimate aim pursued.

63. The Court notes that both the Municipal Court and the Supreme Court held that, in the circumstances of the case, there had been no justified reason for the applicant not to return to Zadar. Each of those courts reached this conclusion after having duly considered the factual and legal questions arising in the dispute and conducted a careful analysis of the arguments put forward by the applicant. The courts gave detailed reasons for their decisions.

In particular, both courts took account of the applicant's age and health problems and were satisfied that her physical condition would have enabled her to travel. Furthermore, they took the view that the escalation of the armed conflict could not be seen as a justified reason for leaving Zadar, since it affected every citizen of the town equally. Their conclusions were in evident compliance with the previously established case-law of the Supreme Court on that matter (see paragraphs 30-31 above).

The Court notes at this juncture that the final decision in the case, directly decisive for the applicant's rights under the Convention, was given by the Constitutional Court on 8 November 1999. That court deferred to the Supreme Court's findings, when ruling that the latter's decision did not constitute a violation of the applicant's constitutional rights.

64. The Court accepts that where State authorities reconcile the competing interests of different groups in society, they must inevitably draw a line marking where a particular interest prevails and another one yields, without knowing precisely its ideal location. Making a reasonable assessment as to where the line is most properly drawn, especially if that assessment involves balancing conflicting interests and allocating scarce resources on this basis, falls within the State's margin of appreciation.

65. State intervention in socio-economic matters such as housing is often necessary in securing social justice and public benefit. In this area, the margin of appreciation available to the State in implementing social and economic policies is necessarily a wide one. The domestic authorities' judgment as to what is necessary to achieve the objectives of those policies should be respected unless that judgment is manifestly without reasonable foundation. Although this principle was originally set forth in the context of complaints under Article 1 of Protocol No. 1 – in, for example, *James and Others v. the United Kingdom,* judgment of 21 February 1986, Series A no. 98, p. 32, § 46; and *Mellacher and Others v. Austria,* judgment of 19 December 1989, Series A no. 169, p. 25, § 45 – the Court, bearing in mind that the Convention and its Protocols must be interpreted as a whole, considers that the State enjoys an equally wide margin of appreciation as regards respect for the home in circumstances such as those prevailing in the present case, in the context of Article 8. Thus, the Court will accept the judgment of the domestic authorities as to what is necessary in a democratic society unless that judgment is manifestly without reasonable foundation, that is, unless the measure employed is manifestly disproportionate to the legitimate aim pursued.

This margin is afforded both to the domestic legislature ("in accordance with the law") and to the bodies, judicial amongst others, that are called upon to interpret and apply the laws in force (see, *mutatis mutandis*, *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 22, § 48).

66. In the light of the foregoing, the Court is satisfied that the contested decisions were based on reasons which were not only relevant but also sufficient for the purposes of paragraph 2 of Article 8. It cannot be argued that the Croatian courts' decisions were arbitrary or unreasonable, or that the solution they reached in seeking a fair balance between the demands of the general interest of the community and the requirement of protecting the applicant's right to respect for her home was manifestly disproportionate to the legitimate aim pursued. The Court considers that, when terminating the applicant's specially protected tenancy, the national authorities acted within the margin of appreciation afforded to them in such matters.

67. Turning to the applicant's and the third party's suggestion (see paragraphs 42 and 47 above) that the national authorities imposed an excessive burden on the applicant when terminating her tenancy right, rather than merely allocating the flat temporarily to another person, the Court finds that this suggestion amounts to reading a test of strict necessity into Article 8, an interpretation which the Court does not find warranted in the circumstances. The availability of alternative solutions does not in itself render the termination of a tenancy unjustified; it constitutes one factor, among others, that is relevant for determining whether the means chosen may be regarded as reasonable and suited to achieving the legitimate aim being pursued. Provided the interference remained within these bounds –which, in view of its above considerations (see paragraph 66 above), the Court is satisfied that it did – it is not for the Court to say whether the measure complained of represented the best solution for dealing with the problem or whether the State's discretion should have been exercised in another way (see, *mutatis mutandis*, *James and Others v. the United Kingdom,* op. cit., p. 35, § 51).

68. Furthermore, whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8. The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, the applicant has been involved in the decision-making process, seen as a whole, to a degree sufficient to provide her with the requisite protection of her interests (see *W. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 121, p. 29, § 64; *Elsholz v. Germany,* cited above, § 52; and *T.P. and K.M. v. the United Kingdom*, no. 28945/95, § 72, ECHR 2001-V).

69. The Court notes that in the first-instance proceedings the applicant, assisted by counsel, had the opportunity to present her arguments both orally and in writing. Although in the appellate proceedings the County Court and the Supreme Court based their decisions on the first-instance case-file, the applicant was given the opportunity to put forward in writing any views which in her opinion were decisive for the outcome of the proceedings. Consequently, a hearing before the appellate courts was not necessary.

70. In these circumstances the Court is satisfied that the procedural requirements implicit in Article 8 of the Convention were complied with and that the applicant was involved in the decision-making process to a degree sufficient to provide her with the requisite protection of her interests.

71. Accordingly, there has been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

72. The applicant also complained that the loss of her specially protected tenancy had amounted to a breach of her right to the peaceful enjoyment of her possession. Additionally, she argued that her property rights had been violated because she had been deprived of the possibility of buying the flat in question (see paragraph 32 above). She relied on Article 1 of Protocol No. 1, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

73. The Court does not find it necessary to decide whether or not a specially protected tenancy constitutes property or a possession within the meaning of Article 1 of Protocol No. 1 for the following reasons.

74. Even assuming that the termination of the applicant's tenancy involved a right to property, the Court considers that the interference in question was neither an expropriation nor a measure to control the use of property. Therefore, it falls to be dealt with under the first sentence of the first paragraph of Article 1 of Protocol No. 1.

75. Any interference with a right of property, irrespective of the rule it falls under, can only be justified if it serves a legitimate public (or general) interest. The termination of the applicant's tenancy, as the Court has already held (see paragraphs 57-58 above), pursued a legitimate social-policy aim.

76. Furthermore, for the requirements of Article 1 of Protocol No. 1 to be satisfied, an interference with the individual's rights under this provision must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden,* judgment of 23 September 1982, Series A no. 52, p. 26, § 69; *Scollo v. Italy,* judgment of 28 September 1995, Series A no. 315-C, p. 53, § 32).

77. In this connection, the Court refers to its considerations relating to the alleged infringement of the applicant's right to respect for her home (see paragraphs 63–71 above), which are also applicable to her right to the peaceful enjoyment of her possessions.

78. The Court accordingly concludes that the termination of the tenancy and the resultant loss of a possible opportunity to purchase the flat in question did not amount to a violation of Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 8 of the Convention;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.